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**EXTRAORDINARY**

**PART II—Section 3—Sub-section (ii)**

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**No. 89] NEW DELHI, SATUR DAY, MAY 24, 1958/JYAISTHA 3, 1880**

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**ELECTION COMMISSION, INDIA**

**NOTIFICATION**

*New Delhi, the 16th May 1958*

**S.O. 935.**—In continuation of Election Commission's notification No. 82/403/57 dated the 5th February, 1958, published in the Gazette of India, Extraordinary Part II, Section 3, sub-section (ii), dated the 12th February, 1958, under section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Judgment of the High Court of Madhya Pradesh at Jabalpur delivered on the 25th April, 1958, on the appeal filed by Shri Maganlal Bagdi, son of Shri Radhakishan Bagdi, resident of Hansapuri, Nagpur against the order dated the 20th January, 1958, of the Election Tribunal, Jabalpur in Election Petition No. 403 of 1957.

**HIGH COURT OF MADHYA PRADESH, JABALPUR**

**FIRST APPEAL No. 5 OF 1958**

Shri Maganlal Bagdi, son of Shri Radhakishan Bagdi, resident of Hansapuri, Nagpur.—*Appellant—Respd.*

**V.**

Shri Hari Vishnu Kamath, son of Shri Rama Kamath, aged 49 yrs. resident of Dhantoli, Nagpur.—*Respondent—Petitioner.*

Appeal by respondent from the Order of the Court of the Member, Election Tribunal, Jabalpur, presided in by Shri M. V. Bhide, dated the 20th January, 1958 in Election Petition No. 1 (403) of 1957. Original claim for setting aside the election of the appellant-respondent as a Member to the House of the People from the Hoshangabad Constituency under section 98 & 99 R.P. Act. Decreed for it is ordered and declared that the election of the appellant-respondent to the House of People from the Hoshangabad Parliamentary Constituency at the last general election is void u/s 100(1)(b) of the R.P. Act, 1951, claim in appeal for setting aside the order of the Election Tribunal Memo. of appeal presented by Shri H. S. Dabir, counsel for appellant, on 21st January, 1958.

The appeal coming on for final hearing on 14th, 15th, 16th, 19th and 22nd April, 1958 before the Honourable the Chief Justice, Shri M. Hidayatullah and the Honourable Shri Justice G. P. Bhutt, in the presence of Shri R. S. Dabir Counsel for the appellant, and of Shri Y. S. Dharmadhi-kari and N. C. Chatterjee Counsel for the respondent, the following judgment was delivered by the Court:—

## **JUDGMENT**

This is an appeal under section 116A of the Representation of People Act, 1951 (hereinafter called the Act). Against the order of the Election Tribunal, Jabalpur, declaring the appellant's election to the House of the People to be void under section 98, read with section 100(1) (b), of the Act.

2. The appellant, Maganlal Bagdi, and the respondent, H. V. Kamath, were candidates for election to the House of the People from the Hoshangabad Parliamentary Constituency in Madhya Pradesh in the last general election. The appellant was a candidate on behalf of the Congress Party and the respondent on behalf of the Praja Socialist Party. Polling was held on the 25th February and the 4th March, 1957, and votes were counted on the 14th and 17th March 1957. Since the appellant secured 84532 votes as against 59374 votes secured by the respondent, the former was declared to be duly elected on the 17th March, 1957.

3. The respondent challenged the appellant's election on various grounds by a petition under section 81 of the Act, from which this appeal arises. The facts found by the Tribunal against the appellant are the following:

- (1) That he got a pamphlet in Hindi under the heading 'Chetawani' (Ex. P-1) widely distributed among the voters in various villages through his agents and also read it in a public meeting of the voters held at Gadarwara on the 3rd March, 1957.

The Tribunal has found that the pamphlet contained false statement of fact in relation to the personal character or conduct of the respondent, which the appellant believed to be false or did not believe to be true, and accordingly its publication constituted a corrupt practice within the meaning of section 123(4) of the Act.

- (2) That he addressed a public meeting of voters held at Narsimhapur on the 19th February, 1957, in which he made a false statement of fact in relation to the personal character or conduct of the respondent, namely, that he was receiving lacs of dollars from America to discredit Pandit Nehru and his Government, a statement which he believed to be false or did not believe to be true, and accordingly he was guilty of a corrupt practice within the meaning of section 123(4) of the Act; and

- (3) That he addressed a public meeting along with Shrimati Sarla Devi Pathak at mouza Singhpur on the 19th February, 1957 where, in consideration of the Harijans voting for the Congress candidates, they promised to construct a well for them and performed the digging ceremony on a site belonging to Vishwanathsingh (P.W. 11), and accordingly he was guilty of a corrupt practice within the meaning of section 123(4) of the Act.

On these findings the Tribunal declared the appellant's election to be void under section 98, read with section 100(1)(b), of the Act.

4. The respondent had, *inter alia*, made the following averments in his petition against the appellant, namely,—

- (1) That he got a pamphlet in Hindi under the heading 'Savdhan' (Ex. P-2) widely circulated among the voters in different villages through his agents and workers, containing false statements of fact in relation to the candidature of the respondent, which he believed to be false or did not believe to be true.

The Tribunal has found that the pamphlet did not contain a statement of fact in relation to the candidature of the respondent and as such it did not fall under section 123(4) of the Act and as it was not circulated with the consent of the appellant, it could not constitute a ground for declaring his election to be void under section 100(1) (b) *ibid*.

- (2) That he and S. N. Mushran (Congress candidate to the State Assembly from Gotegaon Constituency and at present a Deputy Minister) went to mouza Imalia on the 20th February, 1957 and asked the Patwari of the village, Chidami Lal (P.W. 3), to work for the Congress candidates in the area on pain of being dismissed.

The Tribunal has not accepted the testimony of Chhidami Lal for want of corroboration.

- (3) That he addressed a public meeting of voters at mouza Bankhedli on the 23rd February 1957, where he gave a threat to the respondent and Niranjansingh that he would shoot them if they came before him.

The Tribunal has found that the threat was directed against the partisans of the respondent and Niranjansingh and was conditional on their creating any disturbance, and accordingly it was not covered by section 123(2) of the Act.

4. That he addressed a public meeting of voters at Gadawara on the 3rd March, 1957, where he gave a threat to the effect that whether he won or lost he would see that the respondent and Niranjansingh (P.S.P. candidate for the State Assembly from Gadawara General Constituency) were buried deep in the valley of Narmada river and he would go only after performing the 13th day Shradha ceremony.

The Tribunal has held that the language used was only figurative and was not intended to be taken literally as a threat, and accordingly it did not fall within the mischief of section 123(2) of the Act.

The finding of the Tribunal on these points were challenged before us by the learned counsel for the respondent in support of the order under appeal.

5. The principles which should govern the decision of election disputes are now well settled. The charges of corrupt practices are quasi-criminal in character and allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates: *Harish Chandra v. Triloki Singh* (A.I.R. 1957 S.C. 444, at p. 456). It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with. However, one of the essentials of the law is also to safeguard the purity of the election process and to see that People do not get elected by corrupt practices: *Jagan Nath v. Jaswant Singh* (9 E.L.R. 231, at p. 234). The learned member of the Tribunal was alive to these principles and has apparently decided the matters in controversy keeping those principles in mind. It is for that reason that he has found in favour of the appellant on many issues. His appreciation of evidence should not, therefore, be lightly interfered with, bearing in mind the fact that he had the benefit of having the witnesses before him and of observing the manner in which they deposed before him; *Sarju Pershad v. Jaleshwari* (A.I.R. 1951 S.C. 120). With these principles in mind, we shall first examine the findings which are adverse to the appellant.

6. '*Chetawani*' (Ex P-1): This is a pamphlet in Hindi which purports to have been issued under the signature of Shrimati Sucheta Kriplani. Her husband Shri Kriplani is the leader of the Praja Socialist Party. In the general election before last she stood as a candidate on behalf of the Praja Socialist Party and had actively canvassed for the respondent, but in the last general election she stood as a candidate for the Congress Party. Such a person was likely to carry weight with the electors if she spoke against the respondent. She has denied that she signed or issued the pamphlet in question and this fact is not contested by the appellant also. The Pamphlet is, therefore, clearly a forgery.

7. In the pamphlet the respondent is said to have called Pandit Jawaharlal Nehru, who is described as the Emperor of the heart of India, a 'Nakabil' (worthless) Prime Minister. The reference is to the speech of the respondent at Ahmedabad where, according to the respondent, he had used the following words:

"On this auspicious day (Independence day) if the Prime Minister of a Republic Country instead of congratulating the public threatens the public, then he is not fit to hold that post."

This part of his speech was reproduced in the *Hitavada* in its issue of the 17th August, 1956, Ex. P-10, thus;

"Mr. Kamath added that he (Mr. Nehru) was unfit for holding the position of Prime Minister if he continues to give threats to the people."

This version also does not imply any unconditional denunciation of Pandit Nehru, such as is imputed to the respondent in the pamphlet '*Chetawani*'. And therein lies the sting as rightly observed by the learned member of the Tribunal. Pandit Nehru is doubtless the most beloved leader of the people. Therefore, if, any candidate were reported to have called him a worthless Prime Minister, it would in the estimation of the vast majority of the people who adore him, affect his own worth in relation to his personal character or conduct within the meaning of section 123(4) of the Act. The question, therefore, is whether the respondent had the pamphlet distributed among the voters through his agents.

8. On this point, the learned member of the Tribunal has relied upon the evidence of Onkarprasad (P.W. 8) and Arjun Singh (P.W. 35). Onkarprasad said that S. N. Mushran had given him a copy of the pamphlet at *mouza* Panhari on the 2nd March, 1957, saying Patel see the activities of Kamath Saheb'. S. N. Mushran was a Congress candidate for the State Assembly. In para 4 of the petition, the respondent alleged that the election campaign, publicity and propaganda of Congress candidates for election to the State Assembly as well as to the House of the People were conducted conjointly, and the Assembly candidates were in fact and law the agents of the appellant and *vice versa*. These allegations were admitted by the appellant in his return. His version in the witness-box that the Congress propaganda was joint only in connection with the visit of All India leaders to the constituencies, but otherwise it was quite distinct in respect of each candidate, is at variance with his admission in the return, and was, therefore, rightly rejected by the learned member of the Tribunal. S. N. Mushran must, therefore, be deemed to be the appellant's agent within the meaning of section 123(4) of the Act; see Explanation (1) of section 123.

9. Similarly Arjun Singh (P.W. 35) stated that Kishorilal Palliwal, who was a Congress candidate for election to the State Assembly from Gadawara General Constituency, had given to him copies of the pamphlet for distribution among the voters. For the reasons applicable to S. N. Mushran, Kishorilal Palliwal also must be deemed to be appellant's agent within the meaning of section 123(4) of the Act, and his action would bind the appellant. It was urged against this witness that since he could not name the persons to whom he distributed the pamphlets and the date or month when he did so, he should not be relied upon. We do not think that this is a sufficient reason to disbelieve him. A person who distributes pamphlets indiscriminately, is not likely to remember the names of the persons to whom he gave them. So far as the date or month of distribution is concerned, one may not remember it by number or name, but may indicate it by reference to an important event. The witness stated the date in the latter manner by reference to the date of the election, that is, he distributed the pamphlets, one day before the election. It was also urged that he was not likely to have worked for Kishorilal Palliwal as it did not appear from his evidence that he continued to be a member of the Congress. This is not, however, a ground for holding that he would not have worked for the Congress candidate. No sufficient reason is shown why the learned member of the Tribunal should not have relied upon his evidence. We, therefore, confirm the finding of the Tribunal that copies of the pamphlet were distributed by the appellant's agents among the voters on the 2nd and 3rd March, 1957.

10. As regards the falsity of the statement of fact continued in the pamphlet, the allegation that Shrimati Sucheta Kriplani advised the voters not to vote for the respondent is certainly false. This statement could not also be believed to be true by the appellant, since to his knowledge she had not made such an appeal. Mere circulation of the pamphlet, therefore, is sufficient to bring the case within the mischief of section 123(4) of the Act.

11. The Tribunal has further found that the appellant had read the pamphlet in the public meeting of the voters at Gadawara on the 3rd March, 1957. The criticism of the learned counsel for the appellant was that this finding transgresses the limits of the pleading on the point and cannot accordingly be maintained. It is true that in para 7(a) of the petition, dealing with this point, there is no specific allegation that the pamphlet was read by the appellant in any meeting. But this was, in our judgment, not a matter for pleading, as it forms only evidence to prove the allegation of circulation that was duly pleaded. As regards the evidence on the point, the learned member of the Tribunal cannot, in our opinion, be said to have erred in accepting the testimony of Devicharan (P.W. 9) and Chhotelal (P.W. 19) who are not shown to be interested witnesses. His finding on this point also is, therefore, confirmed.

12. In the view that we have taken, it is not necessary to determine the authorship of the pamphlet. We need not, therefore, consider whether it was Ramrao Waghude, Joint Secretary of the Maharashtra Socialist Party, who had presaged the pamphlet in Ex. P-8, that was responsible for it. The reason is that whoever the author, the appellant would be deemed to have adopted it when he read it in a public meeting and his agents distributed its copies among the voters. This incident alone, therefore, is sufficient to declare the appellant's election to be void under section 98, read with section 100(1)(b), of the Act.

13. 'Doolars': The appellant is alleged to have said in the public meeting of the voters at Narsimhapur on the 19th February, 1957 that the respondent was receiving lacs of dollars from America to discredit Pandit Nehru and his Government. It is not disputed that this is not a fact. If, therefore, such a statement was made by the appellant, he must have believed it to be false or not believed it to be true. The implication is that the respondent is receiving money from foreigners for an oblique purpose. That certainly reflects on the personal character or conduct of the respondent. The question is whether the appellant had made this statement.

14. This matter has been dealt with by the learned member of the Tribunal in paras 82 to 88 of the order. He has mainly relied upon the testimony of Devicharan (P.W. 9) and Manakchand (P.W. 47) who have not been shown to be interested witnesses. In the context of the speech made by Shrimati Indira Gandhi, daughter of Pandit Jawaharlal Nehru, at Delhi about the Praja Socialist Party receiving foreign aid, it is not unlike, that similar statements were made by Congress candidates against the candidates set up by the Praja Socialist Party. It was, however, urged that when on practically the same set of witnesses the learned member of the Tribunal found against the respondent on his allegation that the appellant had repeated the statement in the public meeting of voters at Gadawara on the 3rd March, 1957, he should not have held differently in respect of the meeting at Narsimhapur. This matter has been dealt in para 105 of the order. It would appear therefrom that the learned member of the Tribunal did not disbelieve the witnesses, but was of the opinion that an oblique purpose in receiving the money was not clearly indicated in the evidence, and accordingly the statement did not fall within the mischief of section 123(4) of the Act. That finding, therefore, cannot be a ground for challenging the consistent and cogent evidence as regards the statement made by the appellant in the meeting at Narsimhapur. The finding thereon is accordingly confirmed.

15. 'Singhpur well'.—This matter has been dealt with by the learned member of the Tribunal in paras 131 to 149. The pleading on the point is that the appellant and Shrimati Sarla Devi Pathak, who was a congress candidate for election to the State Assembly from Narsimhapur Constituency, has addressed a public meeting of voters at *mouza* Singhpur where the villagers said that they needed a well as there was dearth of water supply in the village. The appellant with some villagers then selected a site on the land of Vishwanathsingh (P.W. 11) and there he and Shrimati Sarla Devi Pathak performed the ceremony of consecrating and digging the well and promised to construct the well after the election. It was alleged that this was done with the object of inducing the voters to vote for the appellant and not to vote for the respondent.

16. The finding of the Tribunal is that the appellant and Shrimati Sarla Devi Pathak did come to the village on or about the 10th January, 1957 when they had asked the Harijans to vote for the Congress candidates. The Harijans then said that they would vote for the Congress candidates but their difficulty of water should first be removed, to which they said that a well would be constructed and that they should vote for the Congress candidates: Charka (P.W. 13). The appellant and Shrimati Sarla Devi Pathak then went to the village again on the 19th February, 1957 when they addressed a public meeting of voters in the evening. After the meeting, the Harijans again requested them for the construction of a well and said that they would vote for the Congress candidates if the well was constructed. They then asked the Harijans to show them a suitable site. The Harijans accordingly took them to their Mohalla and showed a site on the land of Vishwanathsingh. They then called a priest to consecrate the site and performed the ceremony of digging a well and said that they would arrange for that site with Vishwanathsingh on the next morning: Mangal (P.W. 12), Charka (P.W. 13) and Harprasad (P.W. 14) on the next day, they talked with Vishwanathsingh (P.W. 11) who promised to give the site provided that money was deposited first with some person in the village and the well was constructed after the election. The appellant and Shrimati Sarla Devi Pathak told him that they had already deposited Rs. 500 with Sirpanch Chhablal. He then went to the site that was selected and found that Muhurt (Consecration) ceremony was already performed. He then repeated the two conditions. However, the construction of the well was commenced the next day, to which he did not object because that might have prejudiced the voters against the Praja Socialist Party to which he belonged: Vishwanathsingh (P.W. 11).

17. It cannot be doubted that a well was dug on the site belonging to Vishwanathsingh (P.W. 11): Patwari Narmada Prasad (P.W. 4). It also appears that Shrimati Sarla Devi Pathak had on the 13th January, 1957 written to the Deputy Commissioner for construction of a well at Singhpur by the Janapada Sabha.

This matter has been discussed by the learned member of the Tribunal in paras 140 to 141 of the order. This lends assurance to the testimony of Charka (P.W. 13) as to what had transpired on the 10th January 1957. It appears from the evidence of Girirajsingh (P.W. 10), who is the Chairman of Public Works Standing Committee of the Sabha, that he had opposed the construction of a well at Singhpur. This finds support from his proposal Ex. P-A, dated the 29th April, 1957, in which Singhpur is not mentioned.

18. It is true that in the pamphlet Ex. P-13, he had shown an item of Rs. 532-8-0 as sanctioned by the Sabha for the construction of a well at Singhpur. His explanation that this amount was sanctioned for a pump does not appear to be true. If it is kept in mind that the Sabha sanctioned only one-fourth of the capital cost and the balance was donated Government, it would easily appear that Rs. 2,000 could not have been the estimated cost of a tube well. The pamphlet only indicates that seeing that a well was to be dug in the village, he had thought it proper to take the credit for the Praja Socialist Party, to which he belongs, by ascribing the project to the Janapada Sabha which was run by his Party. It may appear at first sight odd that the site belonging to Vishwanathsingh, a member of the Praja Socialist Party, should have been selected for constructing the well. This, however, cannot matter as the Harijans had selected that site, and it also appears that no refusal could have been offered by Vishwanathsingh as he would have gone against the candidates of his own Party. The learned member of the Tribunal has observed that Mangal (P.W. 12), Charka (P.W. 13) and Harprasad (P.W. 14), the first two being Harijans and the last, an Adivasi, had no reason to depose against the appellant. He, has, therefore, relied upon their evidence, keeping in view the preceding and subsequent events. The appellant admitted in his evidence that he was present in the village on the date when a well was being dug. In the circumstances of the case, we are satisfied that the well was being dug at his instance and as a bait for votes.

19. It was, however, urged for the appellant that the witnesses on the point are persons who could not be cross-examined because of the absence of the counsel on the date they were examined, and accordingly, even though their evidence is legally admissible, it should carry little weight and also that this Court should give him an opportunity to cross-examine them before accepting their testimony. It was not disputed that the Tribunal was justified in examining the witnesses as no request was made to it for an adjournment. It was, however, urged that it should have accepted the appellant's application made to it on the next day to recall the witnesses for cross-examination. It was the duty of the appellant to satisfy the Tribunal why, when he had engaged three counsels, none of them appeared on the date fixed for hearing of the witnesses, at least to make a request for adjournment, if not actually to cross-examine them. In these circumstances, and keeping in view the fact that the Tribunal had limited time under the statute to complete the enquiry, it was, in our judgment, justified in refusing to recall the witnesses; See *Harish Chandra v. Triloki Singh* (Supra). In this connection the fact that the Tribunal had on other occasions recalled some of the respondent's witnesses cannot be a ground for holding that it acted wrongly in refusing the appellant's request when no reasonable cause was shown to the satisfaction of the Tribunal why he failed to cross-examine them while they were in the witness-box. There is, therefore, no force in the request, for recalling them now. The evidence having been legally tendered, and the appellant having had an opportunity to rebut it, the Tribunal was entitled to read that evidence in the ordinary way.

20. The learned counsel for the appellant further urged that the evidence of the witnesses is not reliable because if the meeting was held at 8 P.M. as stated by Mangal (P.W. 12) the appellant and Shrimati Sarla Devi Pathak could not have been present in the meeting at Narsimhapur the same night at about 9 or 9-30 P.M., in case any consecration ceremony of the well was performed by them after the meeting had terminated. In this connection, the learned member of the Tribunal was of the opinion that the witness's estimate of time should not be taken too literally, and in view of the evidence of Charka (P.W. 13) and Harprasad (P.W. 14) that the meeting was held after sun-set, it was likely that Mangal's estimate was not correct. Narsimhapur is only about 5 miles from Singhpur and it could not have taken much time for the appellant and Shrimati Sarla Devi Pathak to reach there, if a jeep was, as appears, used by them. Appreciation of evidence of these witnesses by the learned member of the Tribunal cannot, therefore, be assailed on this ground.

21. It was also urged that only two persons of Singhpur were cited as witnesses by the respondent and even their names were not disclosed by him in the list, and that it also appears that the three witnesses who were examined were

not summoned. The record shows that initially the respondent had summoned Harka Gond and Parsu Gond for the 10th November, 1957, but they were not served, and on that account, the three witnesses examined on the 18th November, 1957 were produced by him on that date. This, however, only indicates that the respondent was eager to conclude the trial and finding it difficult to serve Harka and Parsu Gonds, he brought other witnesses for examination. A party is entitled to bring witnesses, although it may also seek the help of the court to summon them. Therefore, the mere fact that the witnesses were brought by the respondent should not *per se* be sufficient to discredit their testimony. Considering all the facts and circumstances of the case, we are not inclined to accept that the learned member of the Tribunal committed an error in replying on the testimony of these witnesses.

22. It was further urged that the respondent had not raised any plea in express terms that the appellant had agreed to construct the well to win the votes of the Harijans for the Congress candidates, and, therefore, he was not guilty of a corrupt practice even if he assured them to construct a well for them. Although the plea was not so clearly expressed, it was nevertheless alleged that what was done by the appellant with a view to induce the voters to vote for him and not for the respondent. As held by their Lordships of the Supreme Court in *Khader v. Munuswami* (A.I.R. 1955 SC 775), while it is meritorious to make a donation for a charitable purpose, but if made on the eve of election, it is open to the charge that its real object was to induce the electors to vote in favour of a particular candidate. Although this observation was made in connection with the question whether the amount so spent should be treated as election expense, the necessary affect of the gift being to induce the electors to vote for a particular candidate, we see no reason why it does not constitute corrupt practice within the meaning of section 123(1) of the Act. As held in *Wigan 4 O'M & H.13*, "charity at the election time ought to be kept by the politicians in the background," as, in truth, "it will generally be found that the felling which distributes relief to the poor at the election time, though those who are the distributors may not be aware of it, is really not charity, but party feeling following in the steps of charity, wearing the dress of charity and mimicking her gait. We are accordingly of the opinion that while we endorse the view of the Tribunal that the circumstances of the case clearly reveal a case of a promise of reward for the votes, the case also otherwise falls within the mischief of section 123(1) of the Act.

23. This disposes of the contentions of the appellant. As we have confirmed the findings which are adverse to him, it is really not necessary to decide whether the findings challenged on behalf of the respondent should be found against him. However, we have gone through the evidence on record on all these points and find ourselves in agreement with the findings of fact arrived at by the Tribunal. It must, therefore, be held—

- (1) That copies of the pamphlet *Savdhan*, Ex. P-2, were distributed among the voters by or at the instance of S. N. Mushran, Kishorilal Palliwal and Shrimati Sarla Devi Pathak, who were all Congress candidates for the State Assembly, and were admitted by the appellant to be his agents in law and in fact;
- (2) That the plea of the respondent that the appellant and S. N. Mushran had attempted to induce patwari Chhidam Lal (P.W. 3) to work for the Congress candidates in his area on pain of being dismissed has not been proved;
- (3) That the threat given by the appellant in the public meeting of voters at mouze Bankhedhi on the 23rd February 1957 was only conditional on the creation disturbance; and
- (4) That the appellant did say in the public meeting of voters at Gadara-wara on the 3rd March 1957 that whether he won or lost he would see that the respondent and Niranjansingh were buried deep in the valley of Narmada river and he would go only after performing the 13th day Shradha ceremony

24. These findings raise the following legal issues, namely,—

- (1) Whether the respondent ought to have proved that S. N. Mushran, Kishorilal Palliwal and Shrimati Sarla Devi Pathak distributed copies of the pamphlet *Savdhan* with the consent of the appellant or his election agent; section 100(1)(b) of the Act;

- (2) Whether the contents of the pamphlet Savdhan amount to any statement of fact in relation to the candidature of the respondent within the meaning of section 123(4) of the Act; and
- (3) Whether the threat given by the appellant to the respondent and Niranjansingh in the public meeting of voters at Gadarwara on the 3rd March 1957, if used figuratively, did not amount to undue influence within the meaning of section 123(2) of the Act.

These questions are important but any expression of opinion on them would only be of an academic nature in view of our findings on the contentions raised by the appellant. We may, however, shortly indicate the position.

24. As regards the first point, section 100 of the Act read as a whole indicates 4 classes or persons, namely, (i) the returned candidate, (ii) the election agent of the returned candidate, (iii) the agent of the returned candidate other than his election agent, and (iv) any other person. Sub-section (1) of section 100 is subject to the provisions of sub-section (2) and, therefore, the question whether in the case of an agent, it is for the opposite party to prove the consent of the returned candidate or for the returned candidate to prove want of consent on his part, would depend upon the effect of sub-section (2) on sub-section (1).

25. As regards the second point, it would be necessary to consider whether section 123(4) of the Act contemplates that the statement of fact should relate to a candidate as distinguished from his party. If the attack on his Party be not contemplated, but if it is maligned in such a manner as to prejudice the prospects of his election seriously, the question will arise whether it can be deemed to be an attack on his candidature within the meaning of section 123(4). In this connection, it may be noted that the clause in relation to the candidature, or withdrawal, or retirement from contest, of any candidate does not find place in the English law of election. Section 123(4), therefore, covers a larger variety of cases than may arise under the English law. Accordingly, the decisions in *Cocker mouth*—(1852) 2 P.R. & D, 166 and *Northlouth* (6 O'M & H 129) which deal with the question as to what constitutes personal character or conduct of a candidate in contradistinction to his political character or conduct, may not help to determine the extent and import of the word 'candidature' in section 123(4) of the Act. While, on the one hand, it may only have a limited interpretation, meaning the right or qualification or factum of candidature as held in *Krishnaji Bhimrao Antrolikar v. Shankar Shanta Ram More* (7 E.L.R. 100), it may, in the circumstances of a case, even have a wider import, including a reflection on the worthiness of a candidate to contest the election.

26. As regard the third point, the question whether the threat was intended literally or was used figuratively is one of fact and since the Tribunal has found that it was only used figuratively as meaning the political burial of the respondent and Niranjansingh, no threat can be deemed to have been intended by the appellant within the meaning of section 123(2) of the Act.

27. In the result the appeal is dismissed with costs. Hearing fee Rs. 250/- which shall be paid out of the security amount, the balance of the deposit shall be returned to the appellant.

#### SCHEDULE OF COSTS

Particulars	Appellant.	Respondent.
	applicant.	Non-applicant.
Court-fee on memo of appeal and application.	23-10-0	0-0-0
Court-fee on power of attorney.	3-8-0	7-0-0
-do- exhibits	91-0-0	0-0-0
-do- processcs	4-0-0	0-0-0
Counsel's fee on Rs.	0-0-0	0-0-0
Fee for preparation of Paper book.	0-0-0	0-0-0
<b>TOTAL</b>	<b>122-2-0</b>	<b>7-0-0</b>

Certificates not filed.

[No. 82/403/57/6434.]

By order,  
DIN DAYAL, Under Secy.